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Attorneys for Defendant

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

EFREN M. ZAMORA,)	No. C-08-01340 SC
)	
Plaintiff,)	THE FEDERAL DEFENDANT'S
)	ANSWER
v.)	
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

For its Answer to Plaintiff's Complaint, Federal Defendant UNITED STATES ("Defendant") admits, denies, and alleges as follows:

1. Defendant lacks sufficient information to admit or deny the allegations of this paragraph and on that basis denies the allegations of this paragraph.
2. Admit.
3. This paragraph contains jurisdictional allegations to which no answer is required.
4. Defendant lacks sufficient information to admit or deny the allegations of this paragraph and on that basis denies the allegations of this paragraph.
5. Defendant lacks sufficient information to admit or deny the allegations of this paragraph and on that basis denies the allegations of this paragraph.
6. Defendant lacks sufficient information to admit or deny the allegations of this

1 paragraph and on that basis denies the allegations of this paragraph.

2 7. Defendant lacks sufficient information to admit or deny the allegations of this
3 paragraph and on that basis denies the allegations of this paragraph.

4 8. Defendant lacks sufficient information to admit or deny the allegations of this
5 paragraph and on that basis denies the allegations of this paragraph.

6 9. Deny.

7 10. Deny.

8 11. The Defendant admits that Plaintiff Zamora made an administrative claim for
9 damages by submitting a Standard Form 95 Claim for Damage, Injury, or Death to the
10 Department of Veterans Affairs. Defendant lacks sufficient information to admit or deny the
11 allegation that Plaintiff Zamora submitted his administrative claim to the Veterans
12 Administration Medical Center, 10535 Hospital Way, Mather, California 95655, and on that
13 basis denies this allegation. Defendant denies that Zamora's administrative claim was rejected
14 because no decision has been rendered on Zamora's claim.

15 Except as expressly admitted, all remaining allegations are denied. The paragraph
16 beginning with WHEREFORE sets forth Plaintiff's prayer for relief to which no response is
17 required. To the extent this paragraph is deemed to contain allegations of material fact, it is
18 denied. No jury trial is available under the Federal Tort Claims Act.

19 All allegations not specifically responded to above are denied.

20 **AFFIRMATIVE DEFENSES**

21 **FIRST AFFIRMATIVE DEFENSE**

22 Federal Defendant denies that it or any of its agents or employees were negligent and/or
23 breached any standard of care due to Plaintiff and/or engaged in any conduct that was the
24 proximate cause of the injuries, damages, and losses allegedly incurred by Plaintiff. The Federal
25 Defendant through its employees, exercised due care and diligence in all matters relevant to the
26 subject matter of Plaintiff's complaint.

27 **SECOND AFFIRMATIVE DEFENSE**

28 Plaintiff's alleged injuries, if any, were proximately caused by Plaintiff's own negligent or

otherwise wrongful conduct.

THIRD AFFIRMATIVE DEFENSE

Any recovery or other award made against the United States herein must be reduced by the percentage of fault of the plaintiff and/or other third party, and any recovery or other award made against the United States herein for non-economic damages must be limited to the percentage of fault, if any, of the United States.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff may recover only those damages allowed under the law.

FIFTH AFFIRMATIVE DEFENSE

Federal Defendant is entitled to absolute, sovereign, and/or qualified immunity.

SIXTH AFFIRMATIVE DEFENSE

Pursuant to 28 U.S.C. § 2675, Plaintiffs are prohibited from claiming or recovering an amount against the United States in excess of that which was set forth in any claim presented to the United States.

SEVENTH AFFIRMATIVE DEFENSE

Pursuant to 28 U.S.C. § 2674, Plaintiff is proscribed from recovering any amount for prejudgment interest or punitive damages against the United States.

EIGHTH AFFIRMATIVE DEFENSE

Under 28 U.S.C. §2412(d)(1)(A), Plaintiff cannot recover attorney's fees from the United States.

NINTH AFFIRMATIVE DEFENSE

Pursuant to 28 U.S.C. § 2402, Plaintiff is not entitled to a jury trial.

TENTH AFFIRMATIVE DEFENSE

To the extent Plaintiff fails to state any claim on which relief can be granted, that claim should be dismissed.

ELEVENTH AFFIRMATIVE DEFENSE

To the extent Plaintiff has failed to exhaust administrative remedies with respect to any

claim, that claim should be dismissed.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's damages, if any, are barred by failure to mitigate.

THIRTEENTH AFFIRMATIVE DEFENSE

Federal Defendant contests the amount and/or necessity of any claim of damages for which Plaintiff seeks relief in his complaint.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff's recovery, if any, is barred by the doctrines of unclean hands, laches, and estoppel.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff's alleged injuries were proximately caused by the intervening or superseding acts of someone other than an employee of the United States acting within the scope of his employment.

SIXTEENTH AFFIRMATIVE DEFENSE

To the extent this action is brought pursuant to the Federal Tort Claims Act, the court lacks subject matter jurisdiction over any defendant other than the Federal Defendant, including but not limited to individual defendants.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiff's cause of action is barred by the statute of limitations.

EIGHTEENTH AFFIRMATIVE DEFENSE

Federal Defendant reserves the right to amend its Answer with additional defenses of which it may become aware as discovery progresses and to raise any other matter constituting an avoidance or affirmative defense.

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PRAYER FOR RELIEF

WHEREFORE, Federal Defendant requests that the Court enter judgment in favor of the Federal Defendant, that the Complaint be dismissed with prejudice, and that the Federal Defendant is granted such other and further relief as the Court may deem just and proper, including recovery of all costs.

DATED: May 9, 2008

Respectfully submitted,

JOSEPH P. RUSSONIELLO
United States Attorney
/s/

MELISSA K. BROWN
Assistant United States Attorney

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee of the Office of the United States Attorney for the Northern District of California and is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that she is causing a copy of the following:

THE FEDERAL DEFENDANT'S ANSWER

Efren Zamora v. United States of America
C 08-1340 SC

to be served this date upon the party in this action by placing a true copy thereof in a sealed envelope, and served as follows:

- ☒ **FIRST CLASS MAIL** by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.
- ☐ **CERTIFIED MAIL (#)** by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.
- ☐ **PERSONAL SERVICE (BY MESSENGER)**
- ☐ **FEDERAL EXPRESS via Priority Overnight**
- ☐ **FACSIMILE (FAX)** Telephone No.: See Below

to the party(ies) addressed as follows:

Thomas Gerald Quick
Attorney at Law
1901 Harrison Street, 9th Floor
Oakland, CA 94612

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on May 9, 2008 at San Francisco, California.

/s/

MANIK BOWIE
Legal Assistant